

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Big Stone Gap Division)**

MELINDA SCOTT,

Plaintiff,

v.

WISE COUNTY DEPARTMENT OF
SOCIAL SERVICES, *et al.*,

Defendants.

Case No. 2:20-cv-00014-JPJ-PMS

Declaration of Counsel

NOW COMES Matthew D. Hardin, Counsel for Defendant Joshua Moon, and states as follows:

1. I am an attorney licensed to practice in Virginia, admitted to both this Court and the Fourth Circuit. I was first admitted to practice law in Virginia in 2014.
2. My retainer agreement with Mr. Moon establishes an hourly rate of \$300 per hour for both in court and out of court work. That rate is reasonable in my area of practice for an attorney with my level of experience.
3. In this case, I estimate that I will expend in excess of 30 hours handling an appeal to the Fourth Circuit. An itemized breakdown of hours already incurred and hours I expect to incur follows:

a. Hours Expended to Date

At the Fourth Circuit, I have filed a Motion to Dismiss (and alternative Motion for Summary Affirmance), a Motion to Suspend the Briefing Schedule, and a Reply in Further Support of the Motion to Dismiss. I spent 0.3 hours researching and writing the first motion, and 0.2 hours researching

and writing the second. I spent .2 hours on the Reply in Further Support of the Motion to Dismiss.

These motions combined account for 0.9 hours of work. At \$300 per hour, \$270 is already due as a result of this work.

b. Hours Expected to be Spent on Motions Practice

At the Fourth Circuit, I anticipate filing a Motion seeking fees and costs under Fed. R. App. P. 38 and incorporating into that Motion arguments relating to the Bad Faith Exception to the American Rule. I expect that such a Motion will be between 15 and 20 pages in length, exclusive of exhibits, and will require at least twenty hours to research and draft given the voluminous record in this case and the possible need for additional evidence not yet in the record.

At the Fourth Circuit, I anticipate filing another Motion to Dismiss Ms. Scott's most recent appeals on the basis that the court only has jurisdiction to hear appeals of "final" orders and on the basis of any failures to pay appellate filing fees. Ms. Scott has served Notice of Appeal of two non-final orders in this matter: a motion to extend a deadline, and a motion to appeal this Court's certification that she did not take her appeal in good faith. It will likely require at least two hours to draft such briefs. More than one brief may be required, given the Plaintiff's pattern of filing multiple appeals in the same case and her proclivity for multiplying the proceedings in this and other courts.

A reasonable estimate is that 22-24 hours will be billed for motions practice in the Fourth Circuit, for an aggregate total of \$6,600-7,200 in fees.

c. Hours Expected to be Spent on Merits Briefing

I expect that the merits brief in this matter will be approximately 15 pages in length, and will take at least 7.5 hours to research and write. At \$300 per hour,

I expect that the merits brief will result in a fee of approximately \$2,250.

4. The combined total of the itemized hours listed in sections a through c, *supra*, taking the lowest assumption where a range of figures is indicated, is \$9,120.00.
5. I have done all that I can to minimize the hours expended on appeal given the frivolous nature of the appeal in this matter and the relative simplicity of combatting the ill-considered arguments that have been raised. Nevertheless, the Fourth Circuit has ruled that the briefing schedule will not be altered in this matter. I expect that Mr. Moon will be required to put on a vigorous defense.
6. I expect that appellate costs will be as follows, based on the Fourth Circuit's established rate of 15 cents per page for printing and copying, the fact that an appendix has not been ordered in this matter, and the rule that four copies of motions and briefs must be filed:
 - a) Motions Stage: Approximately \$28.80 (reflecting an estimated 192 pages)
 - b) Merits Stage: Approximately \$12.00 (reflecting an estimate of 80 pages)
 - c) Postage: Approximately \$89.50 (reflecting the assumption that ten trackable priority mail deliveries will be required for briefs and motions on appeal).
7. Further I say nothing.

I declare that the foregoing is true to the best of my knowledge and belief and under penalty of perjury within the meaning of Va. Code §8.01-4.2 and 28 U.S.C. §1746.

Dated: Oct. 5, 2021

/s/ Matthew D. Hardin
Matthew D. Hardin
Counsel to Joshua Moon